

REMARKS

Favorable consideration and allowance are respectfully requested for claims 14, 16, and 18-31 in view of the following remarks.

The Examiner is again thanked for the careful review and consideration of this case and the notice that claims 16 and 18 are allowed, as well as the withdrawal of the previous 112 rejections.

Withdrawal of the finality of the recent Office Action is respectfully requested.

Regarding the propriety of final rejections on a second or subsequent action on the merits, M.P.E.P. § 706.07(a) states that such actions:

shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

It is respectfully submitted that the new grounds of rejection in the Office Action of November 2, 2005 were not necessitated by Applicant's amendment.

The claim amendments made in the previously-submitted response (that of August 16, 2005) were merely to address certain formalities under 35 U.S.C. 112. The amendments did not change the fact that the claims require outmost negative electrodes flanked by a respective gas-permeable hydrophobic element. These features were provided in the claims on record in the application as early as the Preliminary Amendment filed December 31, 2001. In particular, see dependant claim 15 requiring two outmost negative electrodes each of which is flanked by a transport element. Independent claim 14 defines the transport element as gas-permeable and hydrophobic. As a result, the present claimed device with these elements had been examined by the Office well before the most recent Office Action.

The new grounds of rejection are not based on Applicant's claim amendments, rather they are based on Applicant's arguments that the references

do not disclose every element of the claims, and the Office's further review and consideration of the cited references. In particular, the recent Office Action provides the very first suggestion in the record that the Vexar screens taught by van Ommering et al. amount to the claimed gas-permeable and hydrophobic transport elements. Thus, it appears the new grounds of rejection are a result of a more complete understanding of the claims and further review of the references in view of this understanding.

Because the new grounds of rejection in the final Office Action issued on November 2, 2005 were not necessitated by Applicant's amendments of the claims and are not based on information cited by the Applicant in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c), it is respectfully submitted that the finality of this Office Action is improper and should be withdrawn.

The rejection of claims 14 and 30-31 under 35 U.S.C. § 102(b) as anticipated by van Ommering (US Patent No. 4,115,630) is respectfully traversed.

Each of claims 14 and 30-31 require two outmost negative electrodes flanked by a respective gas-permeable hydrophobic element.

The Office Action indicates that van Ommering discloses a stack of alternating negative and positive electrode layers with the stack beginning and ending with negative electrodes. The Office Action also asserts that "end plates provide means for handling the cell and thus constitute transport plates." The Office Action then continues to state that the Vexar screens which are provided next to the end plates of van Ommering amount to transport plates. The end plates and the Vexar screens as arranged in van Ommering do not amount to the claimed transport plates.

The function of the transport plates of the present invention is to allow for a charge balancing effect in the negative electrodes, as is described in the present specification. This charge balancing effect is achieved by and requires the

evolution of gas from the negative electrodes, hence, the negative electrodes are provided with gas-permeable hydrophobic elements.

As is made clear by paragraph [0010] of the present specification, the gas permeable, hydrophobic transport element allows for the passage of the gasses of the cell atmosphere. Claim 14 itself actually clarifies that the term "transport" is used in the sense of transporting gases. Paragraph [0015] further indicates that the hydrophobic nature of the transport element means that it has some electrolyte-repelling properties.

van Ommering describes an arrangement with compression plates 66 which are used to maintain the stack in its proper orientation and which may be made from an inert material such as polypropylene, polysulfone by compression molding. See column 6, lines 49-56. There is no teaching or suggestion that the compression plates may be gas permeable so as to offer the desired charge balancing effect in the negative electrodes.

In van Ommering, the Vexar screens sandwiched between the negative electrodes and the compression plates would not allow for the passage of gasses of the cell atmosphere and therefore not provide the desired charge balancing effect. Each airspace provided within the mesh of the screen would form its own three-dimensional confined cell when sandwiched between the electrode and the compression plate. The walls of the cell would be provided by the compression plate, the screen mesh and the negative electrode. The compression plate and screen mesh would prevent the passage of gases of the cell atmosphere beyond the cell. Without some egress to relieve gas pressure in the cell, no gas would leave the negative electrode. In essence, the Vexar screen would work as a gasket providing a multiplicity of sealed spaces rather than a transport element for gases as is claimed. van Ommering admits this as the reference indicates that the Vexar screen is provided as a separator element (see col. 8, line 39). Further, the Vexar screen would not have the requisite hydrophobic properties, since, when exposed to electrolyte or any other liquid, the liquid could pass through the screen much the way water will pass through a mesh screen. The reference provides no teaching or

suggestion that such a screen might be used in the manner contemplated by the present invention.

Thus, van Ommering does not teach or suggest that the two outermost electrodes are negative electrodes which are each flanked by a gas-permeable, hydrophobic transport element as is claimed. In view of these differences, reconsideration and withdrawal of this rejection are respectfully requested.

The rejections of claims 19, 20, 21, 22, 23, 25-29, 34 under 35 U.S.C. § 103 as obvious over van Ommering, in view of various references, is traversed. Each of these claims is dependent either directly or indirectly from claim 14. As indicated above, van Ommering fails to teach each and every element of claim 14. The other cited various references similarly fail to teach the missing elements of claim 14. Indeed, these other references are not cited against claim 14. Accordingly, the proposed combination of references fails to teach or suggest each and every element of the claims and these claims are not obvious over the cited combinations of references. Reconsideration and withdrawal of these rejections are respectfully requested.

CONCLUSION

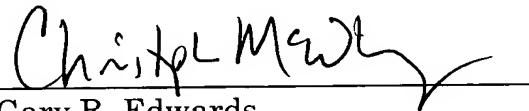
In view of the foregoing, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #080449.50806US).

Respectfully submitted,

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